MAY 5 1986

99TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
99-543

Y 1.1/8: 99-543

H.R. 1260 COMPLETED

JOE HERRING

April 7, 1986.—Committed to the Committee of the Whole House and ordered to be printed

Mr. GLICKMAN, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 1260]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1260), for the relief of Joe Herring, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

On page 1, strike out line 3 and all that follows through line 3 on page 2 and insert in lieu thereof the following:

> That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Joe Herring of Wellington, Texas, an amount equal to (1) the fair market value, on the date of the foreclosure sale, of the farm of Joe Herring (including the mineral rights therein) that secured a loan made to him by the Secretary of Agriculture under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921, et seq.) and that was sold, as a result of improper activities by an employee of the Department of Agriculture, at foreclosure sale in 1975, less (2) any outstanding indebtedness of Joe Herring secured by such farm on such date: *Provided*, That in no event shall the amount paid to Joe Herring under this Act exceed $200,000. For purposes of this Act, the fair market value of Joe Herring's farm on the date of said foreclosure sale shall be determined by an independent appraisal obtained by the Secretary of Agriculture.

71-007 O

ORIGINAL BEST COPY AVAILABLE

PURPOSE

The purpose of H.R. 1260 is to direct the Secretary of the Treasury to pay Joe Herring the fair market value of his property, which was sold by foreclosure by the Farmers Home Administration in 1975. The Secretary of Agriculture is to determine the fair market value based on an appraisal of the property, but in any event, the claimant is not to be paid more than $200,000.

BACKGROUND

In November 1968, Joe Herring applied for and received an operating loan in the amount of $17,300 from the Farmers Home Administration (FmHA) Office, Hillsboro, Texas. The FmHA took a lien on cattle and a farm truck as security for the loan.

The funds loaned to Mr. Herring for the purchase of cattle remained in an FmHA supervised bank account for approximately two years, during which time arrangements for a purchase could not be completed.

On October 28, 1970, the FmHA County Supervisor and Mr. Herring signed a handwritten agreement calling for Mr. Herring to locate cattle for purchase by November 3, 1970. Purchase of the cattle was subject to FmHA inspection and approval. Mr. Herring notified the County Supervisor on November 3, 1970 that he had located cattle to purchase, but the Supervisor refused to inspect the cattle because they were not penned. No arrangements were made for penning by November 16, 1970, so the Supervisor withdrew $11,250 from the FmHA supervised bank account.

Mr. Herring had a very limited cash flow in 1971, resulting from the failure to purchase the cattle in late 1970. On July 9, 1971, the County Supervisor visited Mr. Herring's farm to make a chattel inspection and attempt to settle the loan account. No progress was made in settling the account, but on September 30, 1971, Mr. Herring offered $1,756.10 which he obtained from a sale of 9 calves and of which $1,672.90 was applied to Mr. Herring's loan account.

On October 29, 1971, in spite of the September payment, the County Supervisor recommended that civil action be taken to foreclose on Mr. Herring's security property. In support of his recommendation to foreclose, the County Supervisor maintained that Mr. Herring had not contacted the owner of the cattle he wished to purchase in 1970, and that Mr. Herring would not give FmHA possession of the security or make loan payments.

In the subsequent civil action, a revised payment agreement was negotiated and the loan was secured with a junior mortgage on 400 acres of land owned by him.

Mr. Herring made two of the three payments on the revised loan agreement, and notified the FmHA, in writing, on October 28, 1974, that he was experiencing financial difficulty and expressed a willingness to cooperate with the FmHA to work out a solution that would satisfy his obligation.

Rather than attempt to develop a payment program, the agency started liquidation action on the farm in order to collect approximately $5,500 (principal and interest) on the account.

Mr. Herring's farm was sold at a foreclosure auction on April 1, 1975. The property sold to Thomas J. Duncan, a friend of the

BEST COPY AVAILABLE

County Supervisor, for $5,600 plus the balance owed to the first lien holder on the farm—First Land Bank. The total was approximately $24,531. The land was resold the following month for $96,000 and was sold during the following year for $123,900 and $153,520. (Mr. Herring received $62.12 from the sale as a refund for overpayment of his FmHA account.)

The FmHA did not follow its usual procedure with respect to the bidding at the foreclosure sale. In addition, the Department of Agriculture has concluded that Mr. Herring's loss of his property probably would not have occurred but for the action of the County Supervisor in failing to advise the State Director of the availability of chattel security. The Department of Agriculture recommended enactment of H.R. 1260.

The Committee concluded, as a matter of equity, that Mr. Herring should be compensated for his loss consistent with the guidelines for determining the amount of loss that are contained in the bill. The Committee recommends favorable consideration of H.R. 1260 by the House.

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, DC, October 23, 1985.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: This is in reply to your request of May 31, 1985, for a report on H.R. 1260, a bill "For the relief of Joe Herring."

This Department recommends that the bill be enacted.

The bill directs the Secretary of the Treasury to pay to Mr. Herring an amount, not in excess of $200,000, determined by the Secretary of Agriculture to be "adequate to compensate Joe Herring for the loss he incurred, through no fault of his own, as a result of the improper activities of an employee of the Department of Agriculture in connection with the foreclosure sale in 1975 of Mr. Herring's farm that secured a loan made to him under the Consolidated Farm and Rural Development Act."

The Department has concluded that the sequence of events that culminated in the sale of Mr. Herring's real estate resulted in his unnecessary loss of substantial equity in a cattle ranch, which loss can be rectified only through enactment of the bill.

Facts of the procedure that caused financial injury to Mr. Herring are as follows:

1. History of Loan

In November 1968, Mr. Herring, whose address was then Whitney, Texas, received a $17,300 FmHA farm operating loan for purchase of cattle and other purposes. FmHA took a lien on cattle and a farm truck as security for the loan. The loan proceeds were deposited into an FmHA-supervised bank account, withdrawals from which could be made only with FmHA's concurrence. The funds loaned for purchase of cattle remained in that supervised account for approximately 2 years, during which time arrangements for the

BEST COPY AVAILABLE

purchase could not be completed. Apparently, funds were withdrawn for Mr. Herring's use for the other loan purposes.

On October 28, 1970, the FmHA County Supervisor and Mr. Herring signed a handwritten agreement prepared by the County Supervisor calling for Mr. Herring to locate cattle to purchase by November 3, 1970, with the cows to be purchased subject to FmHA inspection and approval. Otherwise, the remaining loan funds were to be refunded to FmHA, and the unpaid balance paid in full. On November 3, 1970, Mr. Herring advised the County Supervisor that he had located cattle to buy and asked that they be inspected. The Supervisor refused to inspect the cattle because they were not penned and he would have to track them down on the range. He informed Mr. Herring that the animals would have to be rounded up and penned for inspection. No arrangements for penning were made, and on November 16, 1970, the County Supervisor proceeded to withdraw $11,250 from the FmHA supervised bank account, under a letter of authority from the FmHA State Director, and apply the funds to Mr. Herring's loan account.

The failure to consummate purchase of the cattle disrupted Mr. Herring's program for increasing income from his cattle ranching operation, and he had very limited cash flow during 1971. On July 9, 1971, the County Supervisor visited the farm of Mr. Herring to make a chattel inspection and attempt to settle the loan account. Mr. Herring had 11 cows, 2 bulls, 9 calves, and a pick-up truck. No progress was made in settling the account. However, on September 30, 1971, the County Supervisor applied $1,672.90 to Mr. Herring's loan account from a total of $1,756.10 offered FmHA by Mr. Herring from a sale of 9 calves. In spite of this September payment, the County Supervisor recommended, on October 29, 1971, to the State Director that civil action be taken to foreclose on Mr. Herring's security property. In the recommendation, the County Supervisor maintained that Mr. Herring had not contacted the owner of the cattle he wished to purchase in November of 1970, and that Mr. Herring would not give FmHA possession of the security or make loan payments. According to a report by the Office of Inspector General, these assertions appear to conflict with the facts known to the County Supervisor when he made the foreclosure recommendation.

In the subsequent civil action to foreclose on the chattels filed in January of 1972, a revised payment agreement was negotiated between FmHA and Mr. Herring in lieu of liquidation. This agreement called for payments in 1972 and 1973, and a final payment on December 1, 1974. Also, as part of the agreement, Mr. Herring further secured the FmHA loan with a junior mortgage on 400 acres of land owned by him. A Federal Land Bank (FLB) held first mortgage on that land.

Mr. Herring succeeded in making the two loan payments of $1,500 each to FmHA due in 1972 and 1973, but he did not make the final payment by December 1, 1974. He notified FmHA in writing on October 28, 1974, that he was experiencing financial difficulty and expressed willingness to cooperate with FmHA in working out a solution that would satisfy his obligation. Instead of attempting to develop a payment program that would best address the needs of Mr. Herring and FmHA, the agency started liquidation

BEST COPY AVAILABLE

action against the farm on December 20, 1974, to collect approximately $5,500 (principal and interest) owed on the account. Mr. Herring owed approximately $19,000 to the FLB. The FLB has stated that it had no thoughts of foreclosing, in spite of the fact that Mr. Herring was behind in his payments.

2. FmHA Action

The County Supervisor's action in recommending foreclosure only 20 days after the account became delinquent was severe and uncharacteristic of FmHA practice with respect to problem cases. The account of Mr. Herring was not considered for any loan servicing alternatives, such as rescheduling or deferral of payments, that could have been used to assist a farmer-borrower in financial difficulties.

Whether liquidation of chattel security, rather than foreclosing real estate, would satisfy Mr. Herring's outstanding debt of $5,500 was never given adequate consideration. Mr. Herring later claimed that he owned some 32 head of cattle at the time the County Supervisor made the foreclosure decision. Sale of that livestock and the pick-up truck might well have covered the unpaid balance. Texas FmHA officials estimated arbitrarily that the chattel security value was likely less than the $5,500 amount due. But they did not do an actual appraisal of the chattels to confirm or disprove that assumption. The process of chattel appraisal would have required checking the condition of the cattle and the truck under lien to FmHA. There is no evidence that the County Supervisor or any FmHA personnel visited the Herring ranch after 1971.

More important than the inadequate consideration given to possible chattle liquidation, however, was the misrepresentation to the State Director by the County Supervisor of the non-existence of chattel security. In the report to the State Director recommending foreclosure on the Herring ranch, the County Supervisor filled in the word "None" in the section entitled "Assets Other Than The Security Property." The State Director approved foreclosure on January 28, 1975.

Mr. Herring's 400 acres were sold by FmHA at a foreclosure auction on April 1, 1975. There was no requirement that FmHA send Mr. Herring a notice of the impending sale, and FmHA did not do so. However, the County Supervisor told Thomas J. Duncan of the sale, and no one else, though notice of the auction was duly posted and published in accordance with FmHA procedures. The County Supervisor and Mr. Duncan were friends. Upon subsequent investigation by the Office of Inspector General, the County Supervisor stated that Mr. Duncan had been to his home for meals at least six times and that he and his wife had been the guests of Mr. Duncan for dinner and a show in Ft. Worth on one occasion. He frequently lunched with Mr. Duncan, occasionally at Mr. Duncan's expense.

Mr. Duncan was the only bidder, other than FmHA, at the Herring foreclosure. Mr. Herring has stated that he learned of the sale less than one month prior to the sale by reading a notice posted at the local post office. Once aware of the impending sale, he failed to find means for paying off the FmHA debt and averting foreclosure, and Texas law did not provide for redemption rights that would

BEST COPY AVAILABLE

have afforded him an opportunity to satisfy FmHA and redeem the acreage.

At the foreclosure sale, FmHA enters a bid only if no other satisfactory bid has been heard. FmHA regulations in effect at the time stated: "The FHA employee will make only one bid and that will be for the authorized maximum bid. This bid will be made when no other party makes a bid or when it appears that the bidding has slowed down and likely will stop and result in the property being sold for less than the authorized maximum bid." 7 CFR § 1872.20(b)(4)(vii)(1975). At the sale of Mr. Herring's land, FmHA entered the first bid—for $5,531, or the amount Mr. Herring owed FmHA, plus approximately $19,000 required to pay off Mr. Herring's first mortgage balance at the Land Bank. This amount was the maximum FmHA bid authorized by regulations. Mr. Duncan then offered $5,600 plus the balance owed to the Land Bank, and was awarded the sale. Mr. Duncan bought the 400 acres, including mineral rights, for approximately $24,531. Mr. Herring lost his land without any compensation for its value exceeding his debts. (He later received $62.12 from the sale as a refund for overpayment of his FmHA account.)

3. Mr. Herring's Loss

The equity of which Mr. Herring was deprived as a result of the foreclosure sale is indicated by four subsequent sales of the property. About 2 months after the foreclosure sale, Mr. Duncan sold the property for $96,000. During the following year it was resold twice for $123,900 and $153,520, even with a portion of the mineral rights retained by the sellers. Some time later, the property was sold for approximately $170,000.

We understand that some timber and gravel were sold from the farm in amounts and value not known to FmHA. Mr. Duncan has stated that after the foreclosure sale, cattle and other chattel property that belonged to him was stolen from the 400 acres and that he recovered nothing in this loss. Obviously, he has had no income from the property since the foreclosure.

4. Other Remedies Exhausted

Mr. Herring has exhausted all administrative remedies, including a claim for damages under the Federal Tort Claims Act filed in 1979. The tort claim was denied on the grounds that it was made after the 2-year statutory deadline. The cause of action occurred on April 1, 1975, the date of the foreclosure sale, and the claim was not submitted until some 4 years later. The fact that Mr. Herring waited four years to make his claim is cause for concern. We believe, however, that this case must be decided on its merits.

5. Reviews Upheld Mr. Herring

Agency reviews of the treatment accorded Mr. Herring resulted in a letter of caution and a letter of warning to the FmHA County Supervisor involved in this case. A Departmental Office of Investigation (OIG) report questioned the propriety of the social relationship between the Supervisor and Mr. Duncan.

The March 14, 1977, letter of caution from the Texas State Director to the Supervisor contained the following paragraphs:

BEST COPY AVAILABLE

(1) "FmHA instructions in effect in 1974-75 (455.1, IIa) state in part, 'It is the policy of FmHA to continue with borrowers provided they make payments in accordance with their ability to pay.' The 'Report on Real Estate Problem Case,' dated December 20, 1974, recommending foreclosure was issued twenty (20) days after Mr. Herring became delinquent. You had previously received correspondence from Mr. Herring wherein he had explained his strained financial condition and indicated his willingness to cooperate. The report reflected no evidence on your part the alternatives were ever suggested to Mr. Herring in an attempt to resolve the problem. The Federal Land Bank apparently was not pushing for foreclosure and they may have been willing to issue a partial release for Herring to sell a small parcel or to make other acceptable arrangements. You also reported to us that there was not chattel security for the loan, when in effect, Mr. Herring did continue ownership of livestock.

(2) "We agree that many steps could have been taken that would have prevented Mr. Herring losing his farm or that would have provided him better representation at the foreclosure sale. We trust that a situation of like nature will not appear in your administration of the loan programs where you are the responsible official."

The May 10, 1979, letter of warning from the State Director to the Supervisor contains the following paragraph:

"I am in receipt of a report from Office of Investigation, dated August 28, 1978, numbered Hq-499-1, which indicates that certain actions taken by you could have been interpreted as a conflict of interest. FmHA Instruction 2045-BB, Exhibit A, paragraph 735-11, states in part that an employee shall avoid any action whether or not specifically prohibited . . . which might . . . create the appearance of losing complete independence or impartiality. The actions reported by you in your sworn statement to Office of Investigation, wherein you and your spouse attended as Mr. Thomas J. Duncan's guest at the Casa Manana Theater and on other occasions your acceptance of lunches at Mr. Duncan's expense could be interpreted by the general public as a conflict of interest."

Conclusion

Responsible officials of USDA now conclude that the action taken against Mr. Herring resulting in his loss of very substantial equity, probably would not have occurred but for the failure of the County Supervisor to advise the State Director of the availability of chattel security. The action exceeded what would have been necessary to satisfy Mr. Herring's debt, and restitution should be made for his resultant loss. Inasmuch as no administrative means of rectifying the injustice is available, we deem it in order that he be compensated through enactment of the bill H.R. 1260.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

JOHN R. BLOCK, *Secretary.*

○

BEST COPY AVAILABLE